

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

MARY DAUGHERTY, et al.,)
)
Plaintiffs,)
)
vs.) CASE: 1:06-cv-0878- SEB-DML
)
MICHAEL GARGANO, et al.,)
)
Defendants.)

**Entry on Defendants' Motion to Exclude Gary Larsen
as Expert Witness and Motion to Set Briefing Schedule**

This matter is before the court on the defendants' motion to exclude the expert report and any expert testimony by plaintiffs' expert Gary Larsen (Dkt. 350) and their motion (Dkt. 351) to set a briefing schedule on the exclusion motion. Because of the court's familiarity with these issues, it has decided to rule without additional briefing.

The defendants' motion to exclude Gary Larsen's expert report and any testimony by him is based on the plaintiffs' failure timely to disclose all opinions by Mr. Larsen. The deadline for Mr. Larsen's expert disclosures was February 28, 2011, and on that date, the plaintiffs sent to the defendants a report by Mr. Larsen that stated that Mr. Larsen's analysis was incomplete and he was still working on additional analysis. When the defendants complained to the plaintiffs' counsel that Mr. Larsen's report expressly stated it was not complete, plaintiffs' counsel responded that the defendants were "in no position to complain" and referenced the parties' long-running battle regarding the data extract process. The plaintiffs did not seek additional time to make disclosures by Mr. Larsen, a risky gamble.

The court has determined to indulge the plaintiffs one last time regarding Mr. Larsen's expert report. The court emphasizes to the plaintiffs that the court will not permit any discovery

dispute between the parties, or the absence of production of any purportedly relevant documents or information, to serve as a basis for excusing the plaintiffs from timely providing the defendants with a complete report of Mr. Larsen's expert opinions.

The plaintiffs shall serve on or before Friday, **March 18, 2011**, any and all additions or supplements to Mr. Larsen's expert report and disclosures. There will be no further extensions of this deadline.

The court reminds the plaintiffs that Rule 37(c) sanctions preventing untimely disclosed information from being used at trial presumptively will be imposed for late expert disclosures.

The defendants' deadline to make expert disclosures in rebuttal to Mr. Larsen is extended to and including **April 15, 2011**.

Conclusion

Except as otherwise provided in this entry, defendants' motions to exclude Gary Larsen as an expert witness (Dkt. 350) and to set expedited briefing schedule (Dkt. 351) are DENIED.

So ORDERED.

Date: 03/14/2011

Sarah Evans Barker

SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana

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